IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5493 OF 2007

Vijay Rajesh Kachrawat.... Petitioner

versus

Shivaji Suresh Jamble & ors..... Respondent.

Shri G.S.Godbole for the petitioner
Shri Nitin P.Deshpande for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 30TH JULY, 2007

P.C.;

1. The respondent instituted a suit for perpetual injunction apprehending interference with his possession of land by the present petitioner who is the defendant in that suit. Temporary injunction order has been passed in favour of the respondent herein. At a later point of time the petitioner instituted a suit for injunction. However, the trial court and the first Appellate Court have rejected the application in view of the order of temporary injunction passed in the suit filed by the respondent. Both the courts are of the view that any order passed in the suit filed by the present petitioner may create a situation of conflict of the orders. I do not propose to go into the merit of the impugned order at this stage. In my view having regard to the controversy, the dispute to a great extent could be

resolved by directing measurement of the plot of land of the petitioner so also the respondent at the hands of T.I.L.R. to be appointed by the trial court who would measure the land after due notice to both the parties. Both the learned advocates appearing for the respective parties agree for appointment of T.I.L.R. for measuring the respective land of the parties. The expenditure for measurement shall be borne jointly by the parties. Thus without expressing any opinion the present writ petition is disposed of.

2. The trial court shall proceed to pass an order of appointment of T.I.L.R.as Court Commissioner immediately and the T.I.L.R.so appointed shall measure the land of the petitioner and the respondent after due notices to the parties interested and shall also indicate as to whether the work, that is being carried out by the present respondent is within the area of land belonging to respondent or otherwise. With this direction writ petition is disposed of.

3. Liberty to the petitioners to make appropriate application after the report of T.I.L.R. is received. The trial court shall seek expeditious measurement at the hands of T.I.L.R.

4. Parties to act on an authenticated copy of this

order.

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